JENMI AND TENANT BILL.

Mr. Muthunayagom Pillay moved that in view of the importance of the measure and the many petitions received from persons interested, the consideration of the Bill be adjourned to an extraordinary meeting to be convened on the 12th December and proceeded with during a continued session till it is passed.

Mr. Krishnaswamy Rao seconded the motion.

Carried.

DEPARTMENTAL ENQUIRIES BILL.

Mr. Muthunayagom Pillay moved that the Bill be referred to another Select Committee—He said :—

" Mr. President,

" I had written to the Secretary of the Council on the 10th instant that I intended to move today that the Departmental Enquiries Bill be referred again to a Committee for further consideration. I rise now to make the motion of which I had given notice.

" I must confess that I feel great reluctance in attempting to undo to a certain extent, what has been done by a second Select Committee. But as an important question of principle is involved, I think I ought to press my motion, the object of which is to enunciate the principle that the scope of the Bill should be confined to formal or final enquiries as distinguished from informal or preliminary enquiries.

" In British India, Act XXXVII of 1850, which regulates enquiries into the behaviour of public servants, applies to formal enquiries only. Act V of 1893 does not enable officers, other than those who are *specially* deputed by Government to make an enquiry, to summon witnesses. Preliminary enquiries which are made by departmental superiors, without any *special orders* from the Government, are not provided for. The heads of departments are evidently left to collect such evidence as they can, without resorting to any coercive processes. The information so obtained, together with the opinion of the enquiring officer, is placed before Government, who then direct a formal enquiry, if so advised.

" Our Bill as now settled by the Committee, makes no distinction between preliminary and formal enquiries. Section 3 enables every ' officer drawing a salary of not less than one hundred Rupees per mensem ' ' to hold a preliminary enquiry into the conduct of any public servant subordinate to him '; and the following sections invest every such officer with the powers that a Magistrate has under the Criminal Procedure Code, in the matter of summoning and examining witnesses and administering oaths.

" In my humble opinion, it is not advisable to give such large powers to officers holding preliminary enquiries. I will mention one reason. Many an officer having the required salary-qualification, would have but a very limited knowledge of law. By his want of judicial experience, he may allow damaging or incriminating questions to be put to a witness before him ; and the witness being under oath, runs a serious risk in such cases, not to speak of the irreparable harm which may be done to his reputation in the course of his examination. The officer's ignorance of the Law of Evidence and of the Codes of Procedure, may besides lead him into errors full of grave consequences to the accused public servant.

" I think we should confine the power of administering oaths and summoning witnesses, to officers holding formal and public enquiries only. Such officers will always be men specially appointed by the Government for particular cases, and we may be sure that only such officers will be appointed as Commissioners as have a judicial frame of mind and are otherwise well-qualified to sit in judgment on the conduct of the public servants of the State.

" Gentlemen, I therefore propose that the Bill be referred again for consideration to a third Committee, with the enunciation of the principle, that the provisions of the Bill are to apply to formal enquiries only."

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Mr. Thanu Pillay seconded the motion.

Mr. Krishnaswamy Rao opposed it. He said :—

"We are now asked to overrule the decision arrived at by this Council at the meeting held on the 17th February 1894. The Bill as originally introduced by me applied to both the preliminary and final enquiries. The first Select Committee confined it to the final enquiry. At the meeting of the Council held on the 17th February last, Mr. E. Ramier moved that preliminary enquiries should be brought within the scope of this legislative measure. After a very long debate and full discussion, his motion was carried by a majority of five against two. With a view to make such provisions as may be found necessary with reference to preliminary enquiries, the Bill was referred to the second Select Committee, the result of whose deliberations is the Bill now before the Council. The present motion to exclude preliminary enquiries from the Bill, of which I have no previous notice, looks to me as a novel procedure. It may be said that it is never late to mend. I therefore intend to oppose the motion on the merits but not on the technical ground that it is contrary to the decision of this Council dated 17th February last. The efficiency of a final enquiry depends upon the thoroughness of the preliminary enquiry which must precede it. By "Preliminary Enquiry" I mean the enquiry started on the presentation of a complaint and held in the absence of the accused public servant, with a view to ascertain whether there are grounds for calling upon such servant to answer the charge made against him. If the materials collected at the preliminary enquiry do not disclose a *prima facie* case, the complaint is dismissed. To determine whether there is a *prima facie* case, it is necessary to collect all the available evidence. The officer holding the preliminary enquiry may often find it difficult to procure material evidence for or against the accused officer, owing to the reluctance of witnesses to come forward and give evidence unless compelled to do so by summons. If he could not summon witnesses, the enquiry which he holds, must necessarily be defective. Upon such enquiry he may not feel warranted to express an opinion as to whether the accused public servant should be called upon to answer the charge. No public servant should, in my opinion, be called upon to answer a charge unless the result of the preliminary enquiry, distinctly points to his guilt. To subject him to the indignity of a formal enquiry on the basis supplied by a defective preliminary enquiry is, I think, a greater misfortune to him than the indignity which, it is urged, will result from the issue of a summons to a witness in a preliminary enquiry. The Bill, as it now stands, empowers only the Heads of Departments, Judges, Magistrates, Dewan Peishcars or Officers drawing a salary of 100 Rs. and upwards to hold preliminary enquiries (Vide Section 3). Could not these officers be trusted with the power of summoning witnesses in preliminary enquiries ?. A constable in charge of a Police Station, has the power of issuing summonses in the investigations he conducts under the Criminal Procedure Code. All the Judges of the High Court, a Dewan Peishcar of long and varied experience and the Head of the Police Department ask for the power of summoning witnesses in a preliminary enquiry. A Judge of the High Court was unable to procure the attendance of a witness before him at a departmental enquiry, without the assistance of the local Peishcar. As the witness happened to be a Proverthicar, he attended before the Judge of the High Court *at the request* of the Dewan Peishcar. If the witness was not a public servant and a subordinate of the Peishcar, the case, in all probability, would have been decided without the evidence of the most material witness. If there is any officer in the State who ought to be able to procure the attendance of witnesses without summons, such officer must be the Superintendent of Police. Even he complains of the absence of power in him to summon witnesses in Departmental Enquiries. Act V of 1893 (Madras) indicates the necessity for some legal provision on the subject of summoning witnesses in preliminary enquiries. That Act was passed, after it was discovered that so high an official as a Member of the Board of Revenue at Madras found it difficult to procure the evidence of certain witnesses in a preliminary enquiry. I regret that I am unable to see the force of the reasons adduced in favour of the present motion which, if granted, cannot but make the preliminary enquiry, which is the foundation for a final or formal enquiry, very defective. If the foundations are made weak, it is too much to expect that the superstructure will stand. I strongly oppose the motion."

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After the motion was carried, Mr. Krishnaswamy Rao said :— "A thorough revision of the Bill has now become necessary. My friend, Mr. Muthunayagom Pillay expressed a wish to have a Bill on the lines of the British Act regulating the procedure on *formal* enquiries into the conduct of the public servants. I think that it will simplify matters if I am permitted to withdraw the mutilated Bill, now before the Council, in order that some other member may introduce a Bill on the lines the Council may decide. I do not pledge to bringing in a Bill in which no provision is made, regarding the preliminary enquiries. I formally move that the Council be pleased to permit the withdrawing of the present Bill."

Mr. Watts seconded this motion.

Mr. Muthunayagom Pillai observed that all the labour hitherto bestowed on the Bill would be lost, if the Bill be withdrawn at this stage.

Mr. Ramanatha Rao said :—

"I would vote for the withdrawal of the Bill as it would simplify matters and not hamper us in introducing a fresh Bill on any basis that may be deemed desirable."

Mr. Bensley said :—

"I am not prepared to vote for the withdrawal of the Bill as I consider it a highly useful and important one. As regards the amendment proposed that it should be referred to a Select Committee with the instruction that the terms of the Bill shall be applicable only to final enquiries, I disapprove of the instruction to be made to the Select Committee in as much as it precludes the issuing of summonses and administering of oaths in preliminary enquiries. As, in my opinion, the object of the Bill as originally set forth was to enable officers conducting departmental enquiries of any sort, to secure the attendance of any person whose testimony they might require and to ensure that some responsibility is attached to any statement they might make, I think the instruction injuriously limits the scope of the Bill."

The Council being equally divided in opinion, Mr. Krishnaswomy Rao's motion was lost by the President's casting vote.

Mr. Ramanatha Rao moved that instead of a Select Committee again sitting on the Bill, the Council resolve itself into a Committee to discuss the provisions of the Bill with the various amendments at the next ordinary meeting on the principles now enunciated.

Mr. Nagam Iyer seconded the motion.

Carried.

PRISONS BILL.

Mr. Watts presented the report of the Select Committee on the Prisons Bill and moved that the same together with the original and the amended Bills be published in the Gazette.

Mr. Thanu Pillay seconded the motion.

Carried.

CIVIL PROCEDURE CODE AMENDMENT BILL.

Mr. Ramanatha Rao said :—

"I rise to move the amendment of which, I have given notice. The words "Service Inam lands" in section 2 of the Civil Procedure Code amendment Bill are too wide and as they stand may include every kind of property which has or ever had some sort of service attached to it. It may not necessarily mean for service which is *being* rendered. The words are liable to be misinterpreted as applying to lands given for services rendered in the past such as "Kudumba Purathi and "Palansothu-Viruthi" lands. Besides it may also include grants of land for which, perhaps, a nominal service is expected or has to be rendered. If in the section under consideration only Viruthi lands falling under the Royal Proclamation dated $\frac{\text{16th May 1886}}{\text{4th Edavom 1061}}$ are included, it would much simplify matters and those responsible for the administration of the law will have a very safe guide to go by. I would therefore propose the following explanation to be added to section 2."

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